

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
EASTERN DIVISION  
No. 4:14-CR-23-D  
No. 4:16-CV-00114-D

BRIAN KEITH SMITH,

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

**ORDER**

On September 2, 2014, Brian Keith Smith (“Smith”) pleaded guilty, without a plea agreement, to one count of distribution of a quantity of 3, 4-Methylenedioxypyrovalerone and two counts of distribution of a quantity of 3, 4-Methylenedioxy-N-Methylcathinone in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C) [D.E. 1, 26]. On December 2, 2014, the court sentenced Smith to 120 months’ imprisonment [D.E. 31, 32]. Smith did not appeal.

On June 20 and 24, 2016, Smith filed motions to vacate under 28 U.S.C. § 2255 and challenged his status as a career offender [D.E. 39, 41]. On October 18, 2016, the government filed a motion to stay [D.E. 45]. On October 19, 2016, the court stayed this action pending the Supreme Court’s decision in Beckles v. United States. See [D.E. 46].


On March 6, 2017, the Supreme Court decided Beckles v. United States, 137 S. Ct. 886 (2017). In Beckles, the Court held that the advisory “Guidelines are not subject to a vagueness challenge under the Due Process Clause. The residual clause in § 4B1.2(a)(2) therefore is not void for vagueness.” Id. at 892. On June 27, 2017, the government moved to lift the stay [D.E. 50, 51], responded in opposition to Smith’s section 2255 motions, and argued that Beckles defeats Smith’s

claim. See [D.E. 51] 2–3. On July 6, 2017, Smith filed a motion to supplement [D.E. 53].

Beckles defeats Smith’s claim concerning his status as a career offender. See, e.g., Beckles, 137 S. Ct. at 892; United States v. Mack, 855 F.3d 581, 584–85 (4th Cir. 2017); United States v. Lee, 855 F.3d 244, 246–47 (4th Cir. 2017). Thus, Smith cannot obtain relief under section 2255.

In sum, the court GRANTS the government’s motion to lift stay [D.E. 50], GRANTS Smith’s motion to supplement [D.E. 53], DISMISSES Smith’s motions to vacate [D.E. 39, 41], and DENIES a certificate of appealability. See 28 U.S.C. § 2253(c); Miller-El v. Cockrell, 537 U.S. 322, 336–38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000).

SO ORDERED. This 19 day of April 2018.

  
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JAMES C. DEVER III  
Chief United States District Judge